

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

U.S. DEPARTMENT OF ENERGY,
1000 Independence Avenue SW
Washington, DC 20585

Defendant.

Case No. 19-cv-3155

COMPLAINT

1. Plaintiff American Oversight brings this action against the U.S. Department of Energy under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant the U.S. Department of Energy has failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial

action enjoining the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant the U.S. Department of Energy (DOE) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). DOE has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

7. A whistleblower complaint from within the United States intelligence community states that, in a July 25, 2019 telephone call with Ukrainian President Volodymyr Zelensky, President Trump “sought to pressure the Ukrainian leader to take actions to help the President’s 2020 reelection bid,” including by investigating former Vice President Joseph Biden and his son, Hunter Biden; by investigating the origins of allegations of Russian interference in the 2016 U.S.

presidential election; and by speaking with Attorney General Bill Barr and President Trump's personal attorney, Rudolph Giuliani.¹

8. The whistleblower complaint also indicates that President Trump sent United States Secretary of Energy Rick Perry in Vice President Pence's place to President Zelenskyy's inauguration, stating:

I learned from U.S. officials that, on or around 14 May, the President instructed Vice President Pence to cancel his planned travel to Ukraine to attend President Zelenskyy's inauguration on 20 May; Secretary of Energy Rick Perry led the delegation instead. According to these officials, it was also "made clear" to them that the President did not want to meet with Mr. Zelenskyy until he saw how Zelenskyy "chose to act" in office. I do not know how this guidance was communicated, or by whom.²

9. American Oversight submitted the below FOIA requests to inform the public about Secretary Perry's activities in Ukraine.

Ukraine Delegation FOIA

10. On August 9, 2019, American Oversight submitted a FOIA request to DOE seeking the following records:

- 1) Records sufficient to identify all members of the U.S. delegation to Ukraine on or about May 19-21, 2019, led by Secretary Perry.
- 2) A copy of the itinerary or portions of the itinerary (or records reflecting the itinerary) for the U.S. delegation to Ukraine on or about May 19-21, 2019.

11. American Oversight requested all responsive records from May 1, 2019, through the date the search is conducted.

¹ Letter to Chairs Sen. Richard Burr & Rep. Adam Schiff, U.S. Senate Select Committee on Intelligence & U.S. House of Representatives Permanent Select Committee on Intelligence at 2, Aug. 12, 2019, https://intelligence.house.gov/uploadedfiles/20190812_-_whistleblower_complaint_unclass.pdf.

² *Id.* at App. 1-2

12. By letter dated August 15, 2019, DOE acknowledged receipt of American Oversight's FOIA request and assigned the Ukraine Delegation FOIA tracking number HQ-2019-01238-F.

13. By letter dated September 26, 2019, American Oversight requested expedited processing of the Ukraine Delegation FOIA following the public release of a whistleblower complaint, which raised the significant possibility that Secretary Perry was involved in the Trump administration's alleged efforts to pressure the Ukrainian government to investigate one of President Trump's domestic political rivals. *See* Exhibit A.

14. By letter dated October 7, 2019, DOE denied American Oversight's request for expedited processing of the Ukraine Delegation FOIA.

Bleyzer Communications FOIA

15. On August 9, 2019, American Oversight submitted a FOIA request to DOE seeking the following records:

All communications (including emails, email attachments, calendar invitations, text messages, or messages on messaging platforms—such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Twitter Direct Messages, or Facebook Messenger) or calendar entries involving (a) Secretary Rick Perry or anyone serving on his behalf including Chiefs of Staff, assistants, or schedulers and (b) Michael Bleyzer, Natasha Bleyzer, anyone communicating on their behalf, or anyone associated with SigmaBleyzer (sigmableyzer.com).

16. American Oversight requested all responsive records from March 2, 2017, through the date the search is conducted.

17. By letter dated August 15, 2019, DOE acknowledged receipt of American Oversight's FOIA request and assigned the Bleyzer Communications FOIA tracking number HQ-2019-01236-F.

18. By letter dated September 26, 2019, American Oversight requested expedited processing of the Bleyzer Communications FOIA following the public release of a whistleblower complaint, which raised the significant possibility that Secretary Perry was involved in the Trump administration's alleged efforts to pressure the Ukrainian government to investigate one of President Trump's domestic political rivals. *See* Exhibit A.

19. By letter dated October 7, 2019, DOE denied American Oversight's request for expedited processing of the Bleyzer Communications FOIA.

Perry Communications FOIA

20. On September 26, 2019, American Oversight submitted a FOIA request to DOE seeking expedited processing of the following records:

- 1) All email communications (including email messages, calendar invitations, and attachments thereto), text messages, and WhatsApp messages sent or received by Secretary Perry, as well as by any aide or other assistant who accompanied Secretary Perry to Ukraine on or about May 19-21, 2019, containing any of the following key terms:
 - a. Rudy
 - b. Giuliani
 - c. Giuiliani
 - d. Guliani
 - e. Hunter
 - f. Biden
 - g. Bidens
 - h. Burisma
 - i. Lutsenko
 - j. Sytnyk
 - k. Crowdstrike
 - l. Toensing
 - m. diGenova
 - n. Fruman
 - o. Parnas
 - p. Kolomoisky
 - q. Kolomoysky
 - r. Shokin
 - s. Klitschko
 - t. DNC

- 2) Any guidance, directives, or memoranda issued to or by Chief of Staff Brian McCormack with relation to former Vice President Joe Biden, Hunter Biden, and/or Burisma Holdings (also known as Burisma Group).

21. American Oversight requested all responsive records from May 10, 2019, through May 24, 2019.

22. A copy of the Perry Communications FOIA and request for expedition is attached as Exhibit B.

23. By letter dated October 7, 2019, DOE acknowledged receipt of American Oversight's FOIA request and assigned the Perry Communications FOIA tracking number HQ-2019-01418-F.

24. By letter dated October 7, 2019, DOE denied American Oversight's request for expedited processing of the Perry Communications FOIA.

McCormack Communications FOIA

25. On October 2, 2019, American Oversight submitted a FOIA request to DOE seeking expedited processing of the following records:

- 1) All email communications (including email messages, calendar invitations, and attachments thereto), text messages, and WhatsApp messages sent or received by Chief of Staff Brian McCormack containing any of the following key terms:
 - a. Rudy
 - b. Giuliani
 - c. Giuiliani
 - d. Guliani
 - e. Guiliani
 - f. Hunter
 - g. Biden
 - h. Bidens
 - i. Burisma
 - j. Lutsenko
 - k. Sytnyk

- l. Crowdstrike
- m. Toensing
- n. diGenova
- o. Fruman
- p. Parnas
- q. Fuks
- r. Kolomoisky
- s. Kolomoysky
- t. Shokin
- u. Klitschko
- v. Rybolovlev
- w. DNC

Please exclude news clips or mass mailer generated from non-governmental services and emails distributed to a wide listserv of twenty or more email addresses. However, a news clips or mass mailer email that is forwarded to or from Chief of Staff McCormack with any additional message should be considered responsive.

- 2) Any guidance, directives, or memoranda issued to or by Chief of Staff Brian McCormack with relation to former Vice President Joe Biden, Hunter Biden, and/or Burisma Holdings (also known as Burisma Group).

26. American Oversight requested all responsive records from May 10, 2019, through May 24, 2019.

27. A copy of the McCormack Communications FOIA and request for expedition is attached as Exhibit C.

28. By letter dated October 4, 2019, DOE acknowledged receipt of American Oversight's FOIA request and assigned the McCormack Communications FOIA tracking number HQ-2020-00011-F.

29. By letter dated October 7, 2019, DOE denied American Oversight's request for expedited processing of the McCormack Communications FOIA.

Giuliani Communications FOIA

30. On October 2, 2019, American Oversight submitted a FOIA request to DOE seeking expedited production of:

- 1) All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) Secretary Rick Perry, Chief of Staff Brian McCormack, or anyone else who traveled on DOE's delegation to the Ukraine in May 2019 and (2) Rudolph Giuliani, Sam Kislin, Victoria Toensing, or Joseph diGenova.
- 2) All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of Secretary Rick Perry or Chief of Staff Brian McCormack (1) any plan by Rudolph Giuliani, Sam Kislin, Victoria Toensing, and/or Joseph diGenova to travel to Ukraine or to communicate with Ukrainian government officials or future Ukrainian government officials and/or (2) any other effort to encourage the Ukrainian government to investigate any matter related to former Vice President Joseph Biden or his son Hunter Biden.

Please exclude news clips or mass mailer generated from non-governmental services and emails distributed to a wide listserv of twenty or more email addresses. However, a news clips or mass mailer email that is forwarded to or from Chief of Staff McCormack with any additional message should be considered responsive.

31. American Oversight requested all responsive records from January 1, 2019, through the date the search is conducted.

32. A copy of the Giuliani Communications FOIA and request for expedition is attached as Exhibit D.

33. By letter dated October 4, 2019, DOE acknowledged receipt of American Oversight's FOIA request and assigned the Giuliani Communications FOIA tracking number HQ-2020-00012-F.

34. By letter dated October 7, 2019, DOE denied American Oversight's request for expedited processing of the Giuliani Communications FOIA.

Ukraine Communications FOIA

35. On October 9, 2019, American Oversight submitted a FOIA request to DOE seeking expedited production of:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) the DOE officials specified below and (b) any of external individuals or organizations listed below.

Specified DOE Officials:

- i. Secretary Rick Perry
- ii. Deputy Secretary Dan Brouillette
- iii. Former Chief of Staff Brian McCormack
- iv. Anyone currently serving in the capacity of Chief of Staff
- v. Under Secretary Mark Menezes
- vi. Samuel Buchan, Special Adviser
- vii. William Cooper, General Counsel
- viii. Paul Tumminia, Senior Advisor, Office of Russian and Eurasian Affairs
- ix. Anyone serving in the capacity of White House Advisor or Liaison

External individuals and entities:³

³ American Oversight's request stated that alternate spellings or transliterations of any names referenced herein would also render a document responsive to these requests.

- i. Naftogaz, including anyone with an email address ending in naftogaz.com or naftogaz-europe.com
- ii. Andrew Favorov
- iii. Igor Fruman
- iv. Lev Parnas
- v. Harry Sargeant III
- vi. 45 Energy Group, including anyone with an email address ending in 45energygroup.com
- vii. Healy Baumgardner
- viii. SigmaBleyzer, including anyone with an email address ending in sigmableyzer.com
- ix. The Bleyzer Foundation, including anyone with an email address ending in bleyzerfoundation.org
- x. Michael Bleyzer
- xi. Robert Bensch, including anyone with an email address ending in robertbensh.net or robertbensh.org

36. American Oversight requested all responsive records from January 1, 2019, through the date the search is conducted.

37. A copy of the Ukraine Communications FOIA and request for expedition is attached as Exhibit E.

38. By letter dated October 16, 2019, DOE acknowledged receipt of American Oversight's FOIA request and assigned the Ukraine Communications FOIA tracking number HQ-2020-00053-F.

39. By the same letter dated October 16, 2019, DOE denied American Oversight's request for expedited processing of the Ukraine Communications FOIA.

Sent Email Communications FOIA

40. On October 9, 2019, American Oversight submitted a FOIA request to DOE seeking expedited production of:

All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) sent by the DOE officials specified below containing any of the following key terms:

- i. Naftogaz

- ii. Favorov
- iii. Fruman
- iv. Parnas
- v. Sargeant
- vi. 45 Energy Group
- vii. Baumgardner
- viii. SigmaBleyzer
- ix. Bleyzer
- x. Bensch
- xi. Pelicourt
- xii. Rudy
- xiii. Rudolph
- xiv. Giuliani
- xv. Giuiliani
- xvi. Guliani
- xvii. Guiliani
- xviii. Toensing
- xix. diGenova
- xx. Kislin
- xxi. Hunter
- xxii. Biden
- xxiii. Parnas
- xxiv. Fruman
- xxv. Kolomoisky
- xxvi. Klitschko
- xxvii. Burisma
- xxviii. Shokin
- xxix. Lutsenko
- xxx. Zelensky
- xxxi. Zelenskyy
- xxxii. Zelenskiy
- xxxiii. Yermak
- xxxiv. Bakanov
- xxxv. Bohdan
- xxxvi. Rybolovlev

Specified DOE Officials:

- i. Secretary Rick Perry
- ii. Deputy Secretary Dan Brouillette
- iii. Former Chief of Staff Brian McCormack
- iv. Anyone currently serving in the capacity of Chief of Staff
- v. Under Secretary Mark Menezes
- vi. Samuel Buchan, Special Adviser
- vii. William Cooper, General Counsel

- viii. Paul Tumminia, Senior Advisor, Office of Russian and Eurasian Affairs
- ix. Anyone serving in the capacity of White House Advisor or Liaison

41. American Oversight requested all responsive records from January 1, 2019, through the date the search is conducted.

42. A copy of the Sent Email Communications FOIA and request for expedition is attached as Exhibit F.

43. By letter dated October 16, 2019, DOE acknowledged receipt of American Oversight's FOIA request and assigned the Sent Email Communications FOIA tracking number HQ-2020-00051-F.

44. By the same letter dated October 16, 2019, DOE denied American Oversight's request for expedited processing of the Sent Email Communications FOIA.

Ukraine Meetings FOIA

45. On October 9, 2019, American Oversight submitted a FOIA request to DOE seeking expedited production of:

- 1) All records reflecting expenses associated with DOE officials traveling with the U.S. delegation to Ukraine on or about May 19 to May 21, 2019. All invoices, expense reports, government credit card bills, reimbursements related to the trip—including but not limited to hotel bills, meals, per diem costs, and transportation expenses—are responsive to this request.
- 2) All briefing materials provided to the Office of the Secretary in advance of (1) Secretary Perry's meeting with Ukrainian officials in Ukraine on or about May 19 to May 21, 2019; (2) Secretary Perry's dinner with President Zelensky in Belgium on or about June 4, 2019; (3) Secretary Perry's meeting with Ukrainian officials in Poland on or about August 31 to September 2, 2019; and/or (4) Secretary Perry's meeting with Ukrainian officials in Lithuania on or about October 7, 2019.
- 3) Any readouts or summaries of (1) Secretary Perry's meeting with Ukrainian officials in Ukraine on or about May 19 to May 21, 2019; (2) Secretary Perry's dinner with President Zelensky in Belgium on or about June 4, 2019;

(3) Secretary Perry's meeting with Ukrainian officials in Poland on or about August 31 to September 2, 2019; and/or (4) Secretary Perry's meeting with Ukrainian officials in Lithuania on or about October 7, 2019.

- 4) All records reflecting communications (including email messages, email attachments, official cables, handwritten notes, formal readouts, or informal summaries) sent or received by the DOE officials specified below regarding (1) Secretary Perry's meeting with Ukrainian officials in Ukraine on or about May 19 to May 21, 2019; (2) Secretary Perry's dinner with President Zelensky in Belgium on or about June 4, 2019; (3) Secretary Perry's meeting with Ukrainian officials in Poland on or about August 31 to September 2, 2019; and/or (4) Secretary Perry's meeting with Ukrainian officials in Lithuania on or about October 7, 2019.

Specified DOE Officials:

- i. Secretary Rick Perry
- ii. Deputy Secretary Dan Brouillette
- iii. Former Chief of Staff Brian McCormack
- iv. Anyone currently serving in the capacity of Chief of Staff
- v. Under Secretary Mark Menezes
- vi. Samuel Buchan, Special Adviser
- vii. William Cooper, General Counsel
- viii. Anyone serving in the capacity of White House Advisor or Liaison

46. American Oversight requested all responsive records from February 1, 2019, through the date the search is conducted.

47. A copy of the Ukraine Meetings FOIA and request for expedition is attached as Exhibit G.

48. By letter dated October 16, 2019, DOE acknowledged receipt of American Oversight's FOIA request and assigned the Ukraine Meetings FOIA tracking number HQ-2020-00052-F.

49. By the same letter dated October 16, 2019, DOE denied American Oversight's request for expedited processing of the Ukraine Meetings FOIA.

Exhaustion of Administrative Remedies

50. As of the date of this Complaint, DOE has failed to (a) notify American Oversight

of any determination regarding its FOIA requests, including the scope of any responsive records DOE intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

51. Through DOE's failure to respond to the Ukraine Delegation FOIA and Bleyzer Communications FOIA within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

52. Through DOE's denial of American Oversight's requests for expedited processing of each of its FOIA requests, American Oversight has exhausted its administrative remedies as to that issue and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Wrongful Denial of Expedited Processing

53. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

54. American Oversight properly requested records within the possession, custody, and control of DOE on an expedited basis.

55. DOE is an agency subject to FOIA, and it must process FOIA requests on an expedited basis pursuant to the requirements of FOIA and agency regulations.

56. The records sought by American Oversight contain information urgently needed in order to inform the public concerning actual or alleged government activity, and therefore justify expedited processing under 10 C.F.R. § 1004.5(d)(6).

57. DOE wrongfully denied American Oversight's request for expedited processing of each of its FOIA requests.

58. DOE's denial of expedited processing under 10 C.F.R. § 1004.5(d)(6) violated FOIA and agency regulations.

59. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to grant expedited processing of each of its FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Searches for Responsive Records

60. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

61. American Oversight properly requested records within the possession, custody, and control of DOE.

62. DOE is an agency subject to FOIA, and it must therefore make reasonable efforts to search for requested records.

63. DOE has failed to promptly review agency records for the purpose of locating those records that are responsive to the Ukraine Delegation FOIA and Bleyzer Communications FOIA.

64. DOE's failure to conduct adequate searches for responsive records to the Ukraine Delegation FOIA and Bleyzer Communications FOIA violates FOIA and DOE regulations.

65. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

COUNT III
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

66. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

67. American Oversight properly requested records within the possession, custody, and control of DOE.

68. DOE is an agency subject to FOIA, and it must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

69. DOE is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to the Ukraine Delegation FOIA and Bleyzer Communications FOIA.

70. DOE is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to the Ukraine Delegation FOIA and Bleyzer Communications FOIA.

71. DOE's failure to provide all non-exempt responsive records to the Ukraine Delegation FOIA and Bleyzer Communications FOIA violates FOIA and DOE regulations.

72. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to the Ukraine Delegation FOIA and Bleyzer Communications FOIA and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to expedite the processing of the FOIA requests identified in this Complaint;
- (2) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to the Bleyzer Communications FOIA and the Ukraine Delegation FOIA;
- (3) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to the Ukraine Delegation FOIA and Bleyzer Communications FOIA and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (4) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the Ukraine Delegation FOIA and Bleyzer Communications FOIA;
- (5) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (6) Grant American Oversight such other relief as the Court deems just and proper.

Dated: October 22, 2019

Respectfully submitted,

/s/ Hart W. Wood

Hart W. Wood

D.C. Bar No. 1034361

John E. Bies

D.C. Bar No. 483730

AMERICAN OVERSIGHT

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